

COUNTY OF LOUDOUN
DEPARTMENT OF PLANNING
MEMORANDUM

DATE: September 17, 2010
TO: Loudoun County Planning Commission
FROM: Ginny Rowen, Project Manager
SUBJECT: **September 22, 2010 Planning Commission Work Session**
ZMAP 2002-0017, SPEX 2008-0026, SPEX 2008-0027 – Parc Dulles II

BACKGROUND

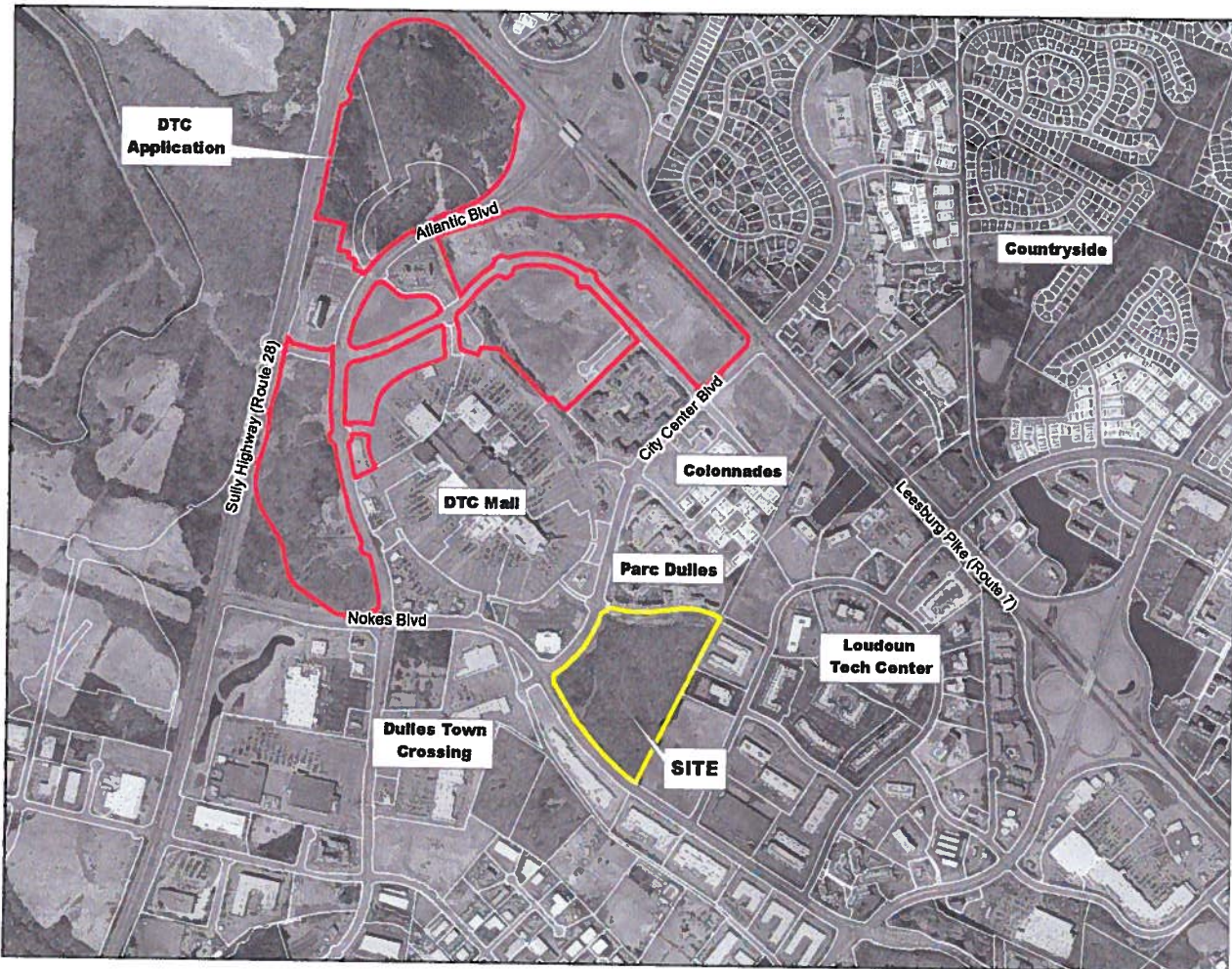
The applications were heard by the Commission at the November 19, 2009 Planning Commission public hearing. One member of the public cited general concerns about residential development and its impact on surrounding schools to handle the increased number of students. The Planning Commission cited concerns regarding fiscal, capital facilities, school, and environmental impacts. Concerns were also cited about the proposed phasing / linkage between the residential and non-residential components. The Commission maintained that the project should be reviewed concurrently with the Dulles Town Center (ZMAP 2007-0001, SPEX 2008-0047, SPEX 2008-0048) applications in order to assess the overall impact of both developments. The applications were forwarded to a work session to continue discussing the outstanding issues cited in the staff report and at the public hearing (voting 8-0-1 Ruedisueli absent).

The Planning Commission held a work session on July 21, 2010 to discuss some of the following outstanding issues:

- non-compliance with land use and design policies;
- phasing / linkage provisions between the residential and non-residential components;
- inadequate capital facilities contributions;
- inadequate commitments to implement the proposed Stream Valley Plan;
- stormwater management concerns;
- zoning issues (comprehensive plan conformance, the purpose of a PD-CC-CC (Commercial Center-Community Center district), and zoning modification requests);
- increased school impacts; and
- transportation issues (the need for a 4-lane extension of Haleybird Drive to Loudoun Tech Center, a cash equivalency for traffic signals, and provisions for transit contributions).

The Commission completed review of the first three topics and recommended an additional work session to discuss the remaining concerns. Based on Planning Commission discussions at the July work session, the applicant has submitted a response memo dated August 26, 2010, and has provided an updated Proffer Statement and Concept Development Plan that resolves some of the above referenced staff concerns. Land use and comprehensive plan

concerns remain as outstanding staff issues. Staff has provided an update for each of the issues (as originally summarized in the July 21, 2010 work session staff memo).



VICINITY MAP

ISSUE STATUS:

The following issues were identified by staff at the Planning Commission public hearing:

1. **Revised General Plan policies call for the development of Keynote Employment at this location.** Areas designated as Keynote Employment are intended to be developed as premier office or research and development supported by ancillary retail and personal services for the employees. They include office parks, research and development parks, corporate headquarters, and similar uses of a large scale. Residential uses and community-serving commercial uses are not anticipated in Keynote Employment areas. The applicant has suggested that this proposal should be evaluated under the Urban Center policies instead of the Keynote Employment policies. The Revised General Plan does not intend that the entire 554 acre Dulles Town Center property will evolve into an Urban Center; instead, Plan policies limit the size of an Urban Center from 50 to 90 acres in order to achieve the development of a compact, pedestrian-oriented, and vertically integrated community. The applicant in the

Dulles Town Center application (ZMAP 2007-0001 & ZCPA 2007-0001) has defined a specific area of the Dulles Town Center property in which the Urban Center will develop (Land Bays TC-1, TC-2, and TC-3) consisting of a total of 73 acres. The subject site is not adjacent to this area nor is the proposal in this application a logical extension of the proposed Urban Center. The single-use residential buildings that are proposed as the dominant type of development do not advance the Plan's vision of an Urban Center.

Update: At the work session, a majority of the Planning Commission maintained that the proposed residential component is appropriate at this location based on the existing development pattern. The Commission stated that residential uses adjacent to the existing Parc Dulles development will create a more balanced community.

2. **The proposal does not comply with a Board of Supervisors resolution that prohibits residential conversions in Keynote areas.** On April 17, 1996, the Board of Supervisors adopted a resolution that prohibits the residential conversion of areas designated as Keynote Employment. The resolution noted that residential conversions defeat the Board's economic development goals for these crucial employment corridors.

Update: At the work session, a majority of the Planning Commission maintained that the proposed residential component is appropriate at this location based on the existing development pattern. The Commission stated that residential uses adjacent to the existing Parc Dulles development will create a more balanced community.

3. **The percentages of open space and civic space are not in conformance with the land use mix specified for high-density Residential communities in the Revised General Plan.** The Revised General Plan calls for high-density residential neighborhoods to provide 10 percent (2.1 acres) of the gross acreage as civic space. The applicant is proposing to develop 445 multifamily units on 21.7 acres at a density of 20.5 dwelling units per acre. The applicant was originally designating a 3.3 acre fire and rescue site and 8,000 square foot clubhouse / community center as the civic component for the development. Staff had cited significant concerns regarding the fire and rescue site since the County was unable to commit to the specific site layout depicted on the Special Exception Plat. Staff had recommended that the applicant withdraw the Special Exception request for a fire and rescue site at this location.

Plan policies state that high-density residential neighborhoods will fully incorporate open space at a minimum of 30 percent of the gross acreage of the property, totaling 6.5 acres for the subject site. The Plan recognizes that the provision of open space is critical in high-density residential neighborhoods because of the greater concentration of residents. Open space can include a variety of passive and active open space, including woods, wetlands, wet ponds, neighborhood and community parks, community gardens, athletic fields, tot lots, hiking and biking trails, streetscape areas, and other natural or man-made features that function as amenities. In order for this project to comply with these policies, at least 4.8 acres should be internal usable open space.

Update: The applicant has redesigned the southeastern portion of the development in accordance with Planning Commission recommendations. Commercial buildings are depicted along the Nokes Boulevard frontage east of the main access road. The request for a Fire and Rescue site has been withdrawn as requested by staff and the size of the public use site within the PD-CC-CC area has been reduced from 3.3 acres to 1.6 acres. The proffers have been revised to allow the following uses on the public use site:

- commuter parking lot;
- police station;
- library;
- teen center;
- County offices;
- community center;
- post office;
- DMV office;
- park.

The applicant has proffered to make the public use site available to the County for a period of 10 years once the property is rezoned after which the property may be developed with other PD-CC-CC uses. Revised General Plan policies allow capital facilities credits for public sites that are dedicated to the County; therefore, the 10-year availability clause should be removed from the draft proffers. County staff has not identified any potential use for the public use site; however, the 1.6 acre lot size will limit the development potential of this site.

The applicant has proffered the following amenities around the wet pond (BMP facility #1):

- trails and walkways;
- 1 gazebo; and
- 3 benches.

The pond and associated amenities can be counted toward meeting open space policies. Based on the changes to the plan and the revised proffers the application meets the open space and civic policies of the Revised General Plan. **Staff Issue Resolved (pending removal of 10-year limitation language on public use site).**

4. **A stronger commitment is needed to require the development of office and to link the office / commercial component to the residential component.** A central objective of the Revised General Plan is to balance business and residential development to promote an effective fiscal policy. The Plan calls for mixed-use projects to provide a development phasing plan that establishes a build-out relationship between the residential and non-residential components.

Approximately 36% of the overall site (12.4 of the total 34.1 acres) is proposed to be rezoned to a PD-CC-CC (Planned Development – Community Center - Commercial Center) zoning district to permit the development of up to 117,000 square feet of non-residential uses (.2 FAR). A Special Exception (SPEX 2008-0027) has been submitted

to allow office square footage in excess of 20% of the commercial floor area. The draft proffers currently allow up to 75,000 square feet of office development on the site. However, the application does not actually require the development of any office. The draft proffers (Proffer I.A.2) state that the property can be developed with up to 117,000 square feet (including a 17,000 square foot public use site) of uses permitted in the PD-CC-CC zoning district (up to 60,000 square feet of retail and/ or up to 75,000 square feet of office with a maximum development of 100,000 square feet are proposed). If the application is approved as proposed, the applicant will have the option of developing the site in accordance with the office Special Exception or not. There are no assurances that any office will actually be developed on the site. Originally, the proffers stated that 400 units (89 percent of the units) could be built if 14,000 square feet (14 percent) of the commercial component is constructed. Given the site's Keynote Employment designation, the applicant should commit to developing the full amount of office square footage proposed in the Special Exception. This could be accomplished by committing to a more balanced phasing plan that ensures the concurrent development of the non-residential and residential components.

Update: The proffers have since been revised as follows: prior to the issuance of the 400th residential zoning permit (89% of the units) the applicant must obtain zoning permits for 28,000 square feet of commercial development (28% of the commercial area). There still are no assurances that any office uses will be developed on the site.

Staff Issues Unresolved.

5. **Commitments should be made to increase office densities and building heights.**

The commercial component is proposed to be developed at a very low density (0.18 FAR) and includes more residential than commercial development. Recent changes to the Revised 1993 Zoning Ordinance allows the by-right development of office uses in PD-IP districts with performance standards (including a minimum of two-stories oriented on major road ways and the ability to achieve higher densities with Special Exception approval). The applicant should commit to minimum building heights of at least two stories within the commercial area. The applicant is encouraged to place retail on the first floor and office on the second floor.

Update: At the Planning Commission work session, a verbal commitment was made to develop 2-story commercial uses. The proffers have not been updated to reflect this verbal commitment. The developer noted that increased office densities are not possible on the site based on environmental constraints and parking demands. **Staff Issue Unresolved.**

6. **Provide a capital facilities contribution consistent with the Capital Intensity Factors adopted by the Board of Supervisors on July 21, 2009.** In accordance with Board policies a contribution of \$23,578 per market rate multi-family unit, (total of \$9,907,086) is anticipated. The proffers (Proffer VI.A.) state that the applicant will pay \$10,937 per dwelling unit for a total contribution of \$4,866,965 if the project is built out. The proposed contribution is significantly less than the anticipated contribution amount. The applicant maintains that the most recently adopted capital facilities amount should not apply to this application, since the proposal was originally submitted and heard by the Planning Commission in 2004. Staff maintains that the most recently

adopted numbers should apply since this is a completely new land development proposal than the application that was originally reviewed by the Planning Commission in 2004.

County policies allow for a capital facilities credit for land that is dedicated to the County (in this case, a 3.3 acre public use site). An appraisal of the property to be dedicated is required to be submitted for staff review to determine the actual amount of the credit. The applicant has not submitted an appraisal; therefore, the amount of the capital facilities credit is unknown at this time.

Update: On September 15, 2010 the County Attorney and staff discussed the Board policy related to capital facilities impacts. The County Attorney maintains that since this application is a new proposal that required extensive staff review and an additional Planning Commission public hearing, the most recently adopted capital facilities amounts should apply to the project. The applicant has asked for a credit for the 1.6 acre public use site. Staff notes that an appraisal has not been submitted for the site; therefore, the amount of credit for the public use site is unknown. Staff also notes that the 10 year cap on the public use site disqualifies the applicant from receiving a capital facilities credit. **Staff Issues Unresolved (total of \$9,907,086 anticipated to mitigate capital facilities impacts).**

7. **Revised General Plan policies specify that cash contributions should include an escalation clause that is tied to the Consumer Price Index.** The draft proffers (Section VI.D.) state that contributions shall escalate by 2% every five years from the time of zoning approval. The proposed escalation clause does not ensure that the contribution amounts will keep up with inflation.

Update: The applicant has revised the proffers as follows: the annual adjustment shall be the lesser of: 2.5% or the actual change in price as measured by the U.S. City Average Consumer Price Index for All Urban Consumers (CPI). **Staff Issue Unresolved. The applicant should remove the annual adjustment cap of 2.5%.**

8. **Additional design commitments should be made to ensure a high-quality development.** The applicant has proffered to “design and construct the residential component with a combination of architectural design and materials found generally in better quality luxury residential developments” (such as Parc Dulles). Additional commitments include pedestrian-scale lighting and benches in active recreation spaces. Staff recommended additional design commitments, such as a variety of building types and acceptable building materials, architectural design elements, streetscape elements (such as benches, fountains, etc.), specific amenities in open space areas (such as benches, seating, gazebos, picnic areas, etc.), screening of trash collection areas and rooftop mechanical equipment which will ensure the development of a high-quality development.

Update: The applicant has revised the proffers to include acceptable building materials such as cultured or natural stone, masonry, precast concrete, wood, high quality exterior siding, Synboard trim, Fypon mouldings, and asphalt shingles. The applicant has also included specific amenities that will be provided around the wet pond. The

applicant has proffered that landscaping and screening shall be used to screen areas for collection of refuse. The proffers state that to the extent possible, rooftop equipment will be screened. **Staff Issue Resolved.**

9. **The proposal does not ensure the implementation of the Stream Valley Plan.** Notes on the rezoning plat (sheet 8-general note 3) require the approval of the Dulles Town Center application to implement the Stream Valley Plan consisting of re-vegetation, tree conservation and stream corridor preservation for the subject site. This note should be removed.

Update: The applicant has removed this note from the Stream Valley Plan. Sections A and B are included within the Parc Dulles 2 (ZMAP 2002-0017) rezoning request. Sections C, D, E, and F are included within the Dulles Town Center (ZMAP 2007-0001) application. **Staff Issue Resolved.**

10. **There are inadequate stormwater management facilities for the public use site.**

The applicant is currently proffering to construct stormwater management facilities when the adjacent residential component is developed. The rezoning plat (Sheet 4) indicates that two Stormwater Management/Best Management Practices (SWM/BMP) facilities will be provided on the subject property. The larger SWM / BMP facility (BMP Facility 1), proposed in the northwestern portion of the site, will be developed as a wet pond and will serve the entire development, including the proposed public use site in the southeastern corner. The applicant is proffering to develop this facility when the residential units are constructed. If the public use site is needed before the development of the residential units, the applicant was not proposing to construct interim SWM facilities for the site. Instead, public funds would be required to construct these facilities.

Update: The applicant has proffered to construct an interim BMP facility for the public use site if the permanent BMP facility is not constructed. **Staff Issue Resolved.**

11. **Additional proffer commitments are needed to ensure the viability of the archaeological site.** A previously unrecorded archaeological site (44LD947) has been identified along the eastern portion of the site within the residential component. The Phase I archeological survey identified it as an early nineteenth century domestic site based on the small artifact assemblage. The site is thought to be either a tenant or an African American slave site. Sites relating to enslaved African Americans and tenant farmers are not well documented in the County or the region. This site may yield important information related to these populations. The site is considered to be potentially eligible for listing in the National Register of Historic Places by the consultant who conducted the Phase 1 survey. The applicant is preserving this site in a Tree Conservation Area (TCA) as depicted on the Rezoning Plat (sheet 4). The proffers (Proffer IV) provide a commitment that the applicant shall conduct a Phase II Archaeological Study for the site prior to any land disturbance and/or approval of any site plan on this portion of the site. The owner shall not be required to perform any additional archaeological studies for this site if it remains undisturbed in accordance with Plan policies. Staff has recommended a Phase II investigation to ascertain archeological site boundaries and eligibility for the National Register of Historic Places.

A 25-foot buffer surrounding the site should also be provided. If tree removal is required for any reason, trees should be cut and not dug out. The draft proffers should be amended to reflect these commitments to ensure viability of the site.

Update: No changes to the proffers. **Staff Issue Unresolved.**

12. **Board policy anticipates residential applications will include provisions for unmet housing needs across a broad segment of the County's income spectrum from 0 – 100% of the Area Median Income (AMI).** The application does not provide any commitments except for the required 28 Affordable Dwelling Units (ADUs).

Update: No changes to the proffers. **Staff Issue Unresolved.**

13. **Shared-use trails along City Center Boulevard and Nokes Boulevard should be constructed to a width of ten-feet.** The rezoning plat depicts five foot wide sidewalks along both road frontages.

Update: No changes to the proffers / concept plan. **Staff Issue Unresolved.**

14. **A cash equivalency should be provided for future traffic signals.** The applicant has proffered to provide traffic signals at the intersection of Haleybird Drive/ City Center Boulevard and the Nokes Boulevard entrance. The County anticipates that two traffic signals will be needed to accommodate site traffic- one at the proposed site entrance off Nokes Boulevard and one at the intersection of City Center Boulevard and Haleybird Drive. The applicant has proffered to provide a warrant study (prior to the 300th residential unit for the City Center signal and within 2 years of the 50,000th square foot of commercial development for the Nokes signal) and to install both signals if warranted. If signals are not needed at the time the warrant study is completed, the applicant's proffers specified that there would be no obligation to provide traffic signals in the future. If traffic signals are not warranted at a specific time, developers generally proffer cash equivalencies to cover the cost to install traffic signals in the future when the signal is needed. This would require the use of public funds to install future traffic signals at these intersections.

Update: The applicant has revised the proffers to include a contribution of \$150,000 for each of the unwarranted signals. Transportation staff notes that based on current cost estimates, a \$300,000 contribution would be appropriate for the Haleybird Drive / City Center Boulevard Drive signal and \$275,000 would be appropriate for the Nokes Boulevard entrance to cover the costs to install the signals. **Staff Issue Unresolved (capital facilities credit language should be removed from the proffers).**

15. **A commitment to extend Haleybird Drive should be provided.** A four-lane section of Haleybird Drive is already completed along the northern property line. The applicant originally proffered to construct a half-section (2 lanes) of Haleybird Drive off-site to the east to connect with Ridgetop Circle in Loudoun Tech Center. Loudoun Tech Center has already dedicated sufficient right-of-way to accommodate the four-lane extension. The applicant proposed to provide a two-lane section of Haleybird Drive to Ridgetop

Circle prior to approval of the initial site plan for residential development or prior to occupancy of at least 50,000 square feet of commercial development.

Update: The applicant has revised the proffers to construct a 4-lane section of Haleybird Drive to connect with Ridgetop Circle in Loudoun Tech Center prior to approval of the initial residential permit or prior to occupancy of the 50,000th square foot of commercial development. Transportation staff maintains that the applicant should include proffer language in which they will make a good faith effort to obtain any needed off-site easements and/or right-of-way. The applicant is requesting a credit against the capital facilities contribution to construct the road. Staff would agree to a 50% credit for this road segment; however, a construction cost estimate must be submitted to the County for review to verify the credit amount. **Staff Issue Unresolved.**

- 16. A commitment to transit funding should be provided.** Staff has recommended a transit contribution of \$575 per dwelling unit (total contribution of \$255,875) in order to facilitate transit services in the vicinity of the subject site. The applicant originally agreed to provide a contribution of \$575 per unit to facilitate transit services only if the transit center proposed in the Dulles Town Center application is denied. Staff maintains that the Dulles Town Center application is a separate proposal that has no bearing on transit contributions for this case.

Update: The applicant has revised the proffers and is including a \$575 market rate unit contribution for transit funding; however, a capital facilities credit has been requested for the contribution. Staff does not agree that a capital facilities credit should be approved for this contribution since the transit contributions will directly and primarily benefit the future residents. **Staff Issue Resolved (pending removal of capital facilities credit language for the transit contribution).**

- 17. The Special Exception requests should be removed from the application (approval of a fire and rescue station site and office uses in excess of 20% of the commercial floor area).** Staff has recommended the withdrawal of the fire and rescue station request based on site size, development constraints, and access concerns. The County has recently approved a 5-acre fire and rescue site in conjunction with the Kincora rezoning which would negate the need for the site at this location.

The applicant is requesting a Special Exception to allow office uses in excess of 20% of the commercial floor area. The Concept Plan and proffers cap commercial development at 100,000 square feet (.18 FAR). Up to 75,000 square feet (75% of the site) can be developed with office uses and up to 60,000 square feet (60 % of the site) can be developed with other permitted PD-CC-CC uses (up to 17,000 square feet of development will be available for the public use site). The proffers do not require the development of office uses at this location.

The purpose of the PD-CC-CC zoning district is to serve the retail shopping needs of the surrounding community. Office uses should not be the predominate use in this district. Staff does not support the Special Exception request since the proposal does not meet the purpose and intent of a PD-CC-CC district. The application should be

revised to rezone the southern portion of the property to a PD-OP (Office) designation in order to develop office uses in compliance with planned land use policies.

Update: The Special Exception request for a Fire & Rescue site has been removed from the application. **Staff Issue Resolved regarding the fire & rescue site. Staff Issue Unresolved for Office special exception request (does not meet intent of PD-CC-CC zoning district).**

18. **A commitment to provide a one-time fire & rescue contribution of \$.10 / square foot of SPEX use should be provided.** The applicant has proffered a fire and rescue contribution of \$120.00 / residential unit and \$.10 / square foot of non-residential development. An additional one-time contribution of \$.10 / square foot of Special Exception use are also anticipated by Board policy.

Update: Adopted Board policies call for a \$.05 per gross square foot contribution for fire and rescue services (base year 1988 with CPI escalator) for commercial development. A \$.10 per square foot contribution is also specified for Special Exception uses. **Staff Issue Unresolved. The applicant should include a \$.10 per square foot contribution for fire and rescue services for the SPEX application.**

19. **The Revised 1993 Zoning Ordinance specifies that a proposal should be consistent with the Comprehensive Plan.** The Revised 1993 Zoning Ordinance, Section 3-701 (Purpose) specifies that R-24 districts shall be mapped in locations designated primarily for infill development or in other locations consistent with the Comprehensive Plan. Section 4-201 (Purpose) of the Revised 1993 Zoning Ordinance specifies that Commercial Centers (PD-CC) shall be located in areas consistent with the Comprehensive Plan. The proposed rezoning to R-24 and PD-CC-CC is not consistent with the land use policies of the Comprehensive Plan since the application proposes high-density residential and community-serving commercial uses.

Update: The proposal is not consistent with the land use policies of the Comprehensive Plan; however, a majority of the Planning Commission maintained that the proposed residential component is appropriate at this location based on the existing development pattern. The Commission stated that residential uses adjacent to the existing Parc Dulles development will create a more balanced community. **Staff Issue Unresolved.**

20. **The application does not meet the purpose and intent of a PD-CC-CC (Commercial Center – Community Center) zoning district.** The applicant amended the application to increase the amount of potential office development from 23,400 square feet to 75,000 square feet (maximum of 100,000 square feet of commercial development proposed). This potentially increases the amount of office in the PD-CC-CC district from 23% to 75%. This is not consistent with the purpose of the PD-CC-CC district, which is to serve the retail shopping needs of the surrounding community. Office uses should not be the predominate use in a PD-CC-CC district. If the applicant intends to develop significant amounts of office space, the appropriate district is PD-OP (Office Park), which would allow a predominant office development and would be in conformance with Keynote Employment policies.

Update: The proposal does not meet the purpose and intent of a PD-CC-CC (Commercial Center) zoning designation; however, a majority of the Planning Commission maintained that the proposed residential component is appropriate at this location based on the existing development pattern. The Commission stated that residential uses adjacent to the existing Parc Dulles development will create a balanced community. **Staff Issue Unresolved.**

21. **Public road access should be provided to accommodate the proposed mix of uses (residential and community-serving commercial).** The development would be served by private streets, including the main spine road that connects the commercial and residential components. Staff has consistently recommended that the main spine road should be public. The PD-CC-CC regulations, Section 4-206 (D) of the Revised 1993 Zoning Ordinance state that vehicular access to commercial centers shall be provided on collector roads, which, by definition, are publicly owned and maintained. This section also specifies that primary access to commercial areas shall be prohibited on residential neighborhood streets. The site layout proposes a continuous, 2-lane private street that connects directly from the commercial component to the residential component. The applicant has stated that private streets are needed to accommodate certain design aspects (such as reduced setbacks).

Update: The applicant maintains that the primary access will be accommodated from Nokes Boulevard with secondary access through the residential area. The applicant also notes that a zoning modification has been requested to access Nokes Boulevard by way of a private street. **Staff Issue Unresolved.**

22. **Staff does not support the zoning modification requests.** The applicant is requesting 2 modifications: to reduce the yard for buildings, parking, areas for collection of refuse and loading areas from 100 feet to 50 feet between the commercial and residential components and to allow private access ways to serve the development instead of the required public roads.

Update: Modification #1 - Staff does not support the modification for a reduced yard since the application proposes a 50% yard reduction (from 100 feet to 50 feet) with an increase in the buffer plantings from a Type 1 to a Type 2 buffer. A Type 1 buffer (consisting of 1 canopy and 4 understory trees) would be increased to a Type 2 buffer (consisting of 2 canopy, 4 understory, 10 shrubs, and 2 evergreen trees). The proposed Type 2 buffer does not sufficiently screen the commercial development from the residential development to warrant a 50% yard reduction. A Type 3 buffer (consisting of 2 canopy, 5 understory, 10 shrubs, and 4 evergreen trees) would be more appropriate to mitigate visual impacts between the disparate land uses.

Modification #2 - The applicant's proposal to mix residential traffic, commercial traffic and emergency vehicle traffic on a private, 2-lane road could create traffic conflicts throughout the development. The requested zoning modifications do not exceed the public purpose, improve upon existing regulations or offer an innovative design. **Staff Issues Unresolved.**

23. The residential conversion of Keynote Employment area exacerbates school capacity issues. Potomac Falls High School has exceeded capacity. Countryside Elementary and River Bend Middle Schools are close to capacity.

Update: Loudoun County Public Schools has stated that students from Parc Dulles II would attend the Park View cluster. **Staff Issue Resolved.**

SUGGESTED MOTIONS

1. I move that the Planning Commission forward ZMAP 2002-0017 and SPEX 2008-0027, Parc Dulles II, to the Board of Supervisors with a recommendation of denial based on the attached Findings. OR
2. I move that the Planning Commission forward ZMAP 2002-0017, and SPEX 2008-0027, Parc Dulles II, to an additional work session for further discussion. OR
3. I move that the Planning Commission forward ZMAP 2002-0017 and SPEX 2008-0027, Parc Dulles II, including the proffers dated August 26, 2010, to the Board of Supervisors with a recommendation of approval.

Attachments:

1. Applicant response memo dated August 26, 2010
2. Draft Proffers dated August 26, 2010
3. Findings for Denial
4. 9/15/10 OTS responses
5. Rezoning Plat / CDP dated August 26, 2010

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August 26, 2010

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Department of Planning
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Re: **Parc Dulles II – ZMAP 2002-0017**

Dear Ginny:



We are pleased to provide resubmission materials for Parc Dulles II, ZMAP 2002-0017. The proposed development has been revised to respond to concerns raised by the Planning Commission and Staff from the Planning Commission public hearing on November 19, 2009, and the worksession on July 21, 2010.

1. **Staff Position:** Revised General Plan policies call for the development of Keynote Employment at this location. Areas designated as Keynote Employment are intended to be developed as premier office or research and development supported by ancillary retail and personal services for the employees.

Applicant Response: The Applicant acknowledges that the property is designated as Keynote Employment in the Revised General Plan, however, the County is currently re-evaluating the Keynote Employment designation as solely office, given that the campus-style office development of the 1980s and early 1990s has evolved to a mixed-use paradigm in attracting keynote employers. Parc Dulles II is a key residential component and integral part of the mixed-use Dulles Town Center project. It is within walking distance of Dulles Town Center's Urban Center and Regional Mall, and is an appropriate extension of the residential development established along the east side of City Center Boulevard. At its worksession on July 21, 2010, the Planning Commission indicated that for the reasons listed above, multi-family residential would be appropriate at Parc Dulles II.

2. **Staff Position:** The proposal does not comply with a Board of Supervisors resolution that prohibits residential conversions in Keynote areas. On April 17, 1996, the Board of Supervisors adopted a resolution that prohibits the residential conversion of areas designated as Keynote Employment. The resolution noted that residential conversions defeat the Board's economic development goals for these crucial employment corridors.

Applicant Response: The Applicant acknowledges the referenced resolution, but would note that mixed-use developments, in which premier office is now locating, requires a residential component. Parc Dulles II serves as that residential component, supporting a vibrant mixture of commercial and retail uses. At its worksession on July 21, 2010, the Planning Commission indicated that for the reasons listed above, residential would be appropriate at Parc Dulles II.

3. **Staff Position:** The percentages of open space and civic space are not in conformance with the land use mix specified for high-density Residential communities in the **Revised General Plan**.

- a. **Civic Space Staff Comment:** The **Revised General Plan** calls for high-density residential neighborhoods to provide 10 percent (2.1 acres) of the gross acreage as civic space. The applicant is proposing to develop 445 multifamily units on 21.7 acres at a density of 20.5 dwelling units per acre. The applicant is designating a 3.3 acre potential fire and rescue site and 8,000 square foot clubhouse / community center as the civic component for the development. Staff has cited significant concerns regarding the potential fire and rescue site since the County is unable to commit to the specific site layout depicted on the Special Exception Plat (sheet 6). Staff had recommended that the applicant withdraw the Special Exception request for a fire and rescue site at this location; however, the applicant has decided to pursue the request. If the County chooses not to accept this particular site for a fire and rescue station, the applicant is proposing to limit development of the site to a public park. A park does not meet the definition of a civic use; therefore, the application will be deficient in civic space. Staff notes that a 5-acre fire and rescue site was recently approved by the Board of Supervisors in conjunction with the Kincora rezoning that was approved on July 12, 2010.

Applicant Response: The Applicant agrees to withdraw its Special Exception request for a fire and rescue station at this location and to withdraw its dedication of a 3.3 acre site for fire and rescue, given the recently-approved fire and rescue site at Kincora.

Under the Revised General Plan, 0.62 acres of civic space is expected in the PD-CC(CC) zoning district, and 2.1 acres is expected in the R-24 zoning district, for a total of 2.73 acres. This application provides a total of 2.8 acres of civic use in Parc Dulles II as a whole, with 1.6 acres of land to be dedicated as civic space in the PD-CC(CC) zoning district, and 1.2 acres of civic space devoted to pool and clubhouse uses in the R-24 zoning district.

Within the PD-CC(CC) zoning district, the Applicant is willing to dedicate the area designated on the revised concept plan as "Public Use Site" for the following civic uses: a commuter parking lot, a police station, a library, a teen center, a satellite county office, a community center, a post office, or a department of motor vehicles office. The Applicant has amended the Proffer Statement to provide that the land will be available for dedication to Loudoun County for a period of 10 years from the date the proffers are approved, after which time, the Applicant will have the right to use the land for other PD-CC(CC) uses. (See Proffer VI.B.1.)

A-3

Based on the above information, it should be concluded that the Residential portion of Parc Dulles II exceeds the Open Space policies of the Revised General Plan.

(b) Open Space in the PD-CC(CC) zoning district. Just as the Residential portion of Parc Dulles exceeds the amount of Open Space recommended in the Plan, the Commercial portion of Parc Dulles II does as well. While a total of 1.2 acres of Open Space is expected in the PD-CC(CC) portion of the Property, 4.7 acres of Open Space is provided. This open space consists of a large swath of Tree Conservation Area and surrounding natural area (2.1 acres), along with open space areas in front of retail (0.6 acres) and perimeter open space (2.0 acres).

(c) Conclusion. Parc Dulles II consists of both residential (R-24) and commercial (PD-CC-CC) uses on a single land bay. The open space within the commercial portion of the property may be used by those in the residential portion of the property, and vice versa. While each portion of the development exceeds the County's open space policies, the development, viewed as a cohesive whole, provides an incredible open space resource that far exceeds the expectations set forth in the Revised General Plan.

4. **Staff Position:** A stronger commitment is needed to require the development of office and to link the office / commercial component to the residential component. A central objective of the Revised General Plan is to balance business and residential development to promote an effective fiscal policy. The Plan calls for mixed-use projects to provide a development phasing plan that establishes a build-out relationship between the residential and non-residential components.

Approximately 36% of the overall site (12.4 of the total 34.1 acres) is proposed to be rezoned to a PD-CC-CC (Planned Development – Community Center - Commercial Center) zoning district to permit the development of up to 117,000 square feet of non-residential uses (.2 FAR). A Special Exception (SPEX 2008-0027) has been submitted to allow office square footage in excess of 20% of the commercial floor area. The draft proffers currently propose up to 75,000 square feet of office development on the site. However, the application does not actually require the development of any office. The draft proffers (Proffer I.A.2) state that the property will be developed with up to 117,000 square feet (including a 17,000 square foot fire and rescue site) of uses permitted in the PD-CC-CC zoning district (up to 60,000 square feet of retail and/ or up to 75,000 square feet of office with a maximum development of 100,000 square feet are proposed). If the application is approved as proposed, the applicant will have the option of developing the site in accordance with the office Special Exception or not. There are no assurances that any office will actually be developed on the site. In addition, the proffers currently state that 400 units (89 percent of the units) could be built if 14,000 square feet (14 percent) of the commercial component is constructed. Given the site's Keynote Employment designation, the applicant should commit to developing the full amount of office square footage proposed in the Special Exception. This could be accomplished by committing to a more balanced phasing plan that ensures the concurrent development of the non-residential and residential components.

A-4

Applicant Response: When viewed in the context of its surroundings: multi-family to the north, low-rise class A and flex-industrial space to the east, and retail to both the south and west, the proposed development, comprised of high-density residential, office and retail uses, creates a land use mix that effectively marries the surrounding land uses together.

In the Applicant's experience, it is unlikely that the commercial portion of Parc Dulles II would never develop. While the timing of that development is dependent on market demand, the vibrant mixed-use nature of the Dulles Town Center and Parc Dulles II projects will mature over time, creating an environment that makes office demand at Parc Dulles II more likely.

To address Staff's concern, the Applicant has agreed to double the minimum amount of commercial space that must be permitted for construction prior to issuance of the 400th residential zoning permit, from 14,000 square feet to 28,000 square feet. (See Proffer I.A.3.) Additionally, it should be noted that the Applicant has committed to reserving more than one-third of the property for non-residential development. This area cannot be converted to residential use without approval from the Board of Supervisors. When Parc Dulles is viewed in the context of the proposed expansion to the Dulles Town Center (ZMAP 2007-0001), a tremendous amount of office space is reserved for the time when office demands are here. In Dulles Town Center, up to 4,750,000 square feet is dedicated for office space. Together, Parc Dulles II and the Dulles Town Center will provide the type of mixed-use environment in which premier office space seeks to locate.

To address the larger issue of linkage, please consider that, according to a report published by Cushman Wakefield (enclosed), Loudoun County's office vacancy rate was close to 30% in the first quarter of 2010.

5. **Staff Position:** Commitments should be made to increase office densities and building heights. The commercial component is proposed to be developed at a very low density (0.18 FAR) and includes more residential than commercial development. Recent changes to the Revised 1993 Zoning Ordinance allows the by-right development of office uses in PD-IP districts with performance standards (including a minimum of two-stories oriented on major road ways and the ability to achieve higher densities with Special Exception approval). The applicant should commit to higher minimum office / commercial densities as well as building heights of at least two stories. The applicant is encouraged to place retail on the first floor and office on the second floor.

Applicant Response: The standards for office construction cited by staff do not apply in the PD-CC(CC) zoning district. The Applicant reduced the amount of office space proposed for Parc Dulles II in its Response to Fourth Round Referral Comments dated October 15, 2009, as a result of staff's comment that office should not be a predominant use in the PD-CC(CC) zoning district.

Proffer 2.a. reserves 40% of the potential floor area within the PD-CC(CC) zoning district for office space, so that when there is a demand for office at this location, the space will be available. The building sited at the corner of Nokes Boulevard and City Center Boulevard is proffered to be a minimum of two stories, as suggested by staff. The remaining non-residential

buildings may be constructed as single-story buildings, similar to and compatible with the single-story office spaces located directly across Nokes Boulevard from the property.

6. **Staff's Position:** Provide a capital facilities contribution consistent with the Capital Intensity Factors adopted by the Board of Supervisors on July 21, 2009.

- a. In accordance with Board policies a contribution of \$23,578 per market rate multi-family unit, (total of \$9,907,086) is anticipated. The proffers (Proffer VI.A.) state that the applicant will pay \$10,937 per dwelling unit for a total contribution of \$4,866,965 if the project is built out. The proposed contribution is significantly less than the anticipated contribution amount. The applicant maintains that the most recently adopted capital facilities amount should not apply to this application, since the proposal was originally submitted and heard by the Planning Commission in 2004. Staff maintains that the most recently adopted numbers should apply since this is a completely new land development proposal than the application that was originally reviewed by the Planning Commission in 2004.

Applicant Response to (a): This Application was heard by the Planning Commission in 2004. The Applicant disagrees that this is a completely new land development proposal. The Planning Commission requested in 2004 that the Applicant suspend progress on the Parc Dulles II application until such time as it could be reviewed in conjunction with the long-term plans for the undeveloped portions of Dulles Town Center. The Applicant complied with the Planning Commission's request and began to design the remainder of the Dulles Town Center. Additionally, the Planning Commission requested that non-residential uses be added to Parc Dulles II, which the Applicant did. The current Parc Dulles II application reflects those changes requested by the Planning Commission, not an entirely new land development proposal.

- b. County policies allow for a capital facilities credit for land that is dedicated to the County (in this case, a 3.3 acre public use site). An appraisal of the property to be dedicated is required to be submitted for staff review to determine the actual amount of the credit. The applicant has not submitted an appraisal; therefore, the amount of the capital facilities credit is unknown at this time. In addition, it appears that the proposed fire and rescue site will not be pursued by the County at this location.

Applicant Response to (b): The Applicant has requested an appraisal of its 1.6-acre civic site, and will forward the appraisal to staff once it is completed.

7. **Staff Position:** Revised General Plan policies specify that cash contributions should include an escalation clause that is tied to the Consumer Price Index. The draft proffers (Section VI.D.) state that contributions shall escalate by 2% every five years from the time of zoning approval. The proposed escalation clause does not ensure that the contribution amounts will keep up with inflation.

Applicant Response: The Applicant has revised the Proffers to provide for the annual adjustment of any cash contribution proffered. (See Proffer VI.D.) The annual adjustment shall be the lesser of: (i) 2.5%, or (ii) the actual change in price as measured by the U.S. City Average Consumer Price Index for All Urban Consumers ("CPI"). The inflation index of 2.5% per year

was derived by taking the average annual escalation over the past 15 years, based on the national 'CPI - Urban Consumers' index.

We recognize that staff requested use of the CPI index for the Washington metropolitan area, however, the rate of inflation for the Washington metropolitan area exceeds the National rate of inflation, and we read Va. Code § 15.2-2303.3 to prohibit the County from requesting or accepting a cash contribution whose amount is scheduled to increase annually by a percentage greater than the annual rate of inflation as calculated by the U.S. City Average Consumer Price Index for All Urban Consumers. Additionally, the U.S. Department of Labor, Bureau of Labor Statistics states on its website that escalation clauses should reference the national index over a specific metropolitan area index, since metropolitan indexes have a relatively small sample size and, therefore, are subject to substantially larger sampling errors. For these reasons, we elected to use the national city average.

(See: <http://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=98&faqsub=Consumer+Price+Indexes&faqtop=Statistics&topicid=6#>, "BLS strongly recommends that users adopt the U.S. City Average CPI for use in escalator clauses.")

8. **Staff Position:** Additional design commitments should be made to ensure a high-quality development. The applicant has proffered to "design and construct the residential component with a combination of architectural design and materials found generally in better quality luxury residential developments" (such as Parc Dulles). Additional commitments include pedestrian-scale lighting and benches in active recreation spaces. Staff recommends additional design commitments, such as a variety of building types and acceptable building materials, architectural design elements, streetscape elements (such as benches, fountains, etc.), specific amenities in open space areas (such as benches, seating, gazebos, picnic areas, etc.), screening of trash collection areas and rooftop mechanical equipment which will ensure the development of a high-quality development.

Applicant Response: The Applicant has enhanced its design commitments for Parc Dulles II (See Proffer I.A.1.b.), as follows:

Residential buildings, including associated community center facilities, shall reflect both the architectural design and buildings materials generally found in quality luxury residential developments in Northern Virginia, including the residential project located immediately north of the Property ("Parc Dulles"). The building materials used in Parc Dulles II (R-24, Residential) would be similar in quality to the following materials: cultured or natural stone, masonry, precast concrete, wood, high quality exterior siding, Synboard™ trim, Fypon™ mouldings, and asphalt shingles.

Pedestrian-scale lighting will be provided within the active recreation areas, including the Village Green, Pool Center, and Community Green. Additionally, a minimum of 2 benches will be provided within each of the Village Green and Community Green, and a minimum of 1 picnic table will be provided within the R-24 zoned portion of the Property. A Type II Rear buffer yard will be provided within the R-24 zoning district, as shown on Sheet 4 of the Rezoning Plat, in areas that are both adjacent to the PD-CC(CC) zoning district and subject to the "modified 50-foot setback" as labeled on the Rezoning Plat. Landscaping and screening shall be used to

screen areas for collection of refuse from residential use. To the extent feasible, rooftop mechanical equipment will be screened from view.

9. **Staff Position:** The proposal does not ensure the implementation of the Stream Valley Plan. Notes on the rezoning plat (sheet 8-general note 3) require the approval of the Dulles Town Center application to implement the Stream Valley Plan consisting of re-vegetation, tree conservation and stream corridor preservation for the subject site. This note should be removed.

Applicant Response: The Applicant has removed this note, as requested.

10. **Staff Position:** There are inadequate stormwater management facilities for the public use site. The applicant is currently proffering to construct stormwater management facilities when the adjacent residential component is developed. The rezoning plat (Sheet 4) indicates that two Stormwater Management/Best Management Practices (SWM/BMP) facilities will be provided on the subject property. The larger SWM / BMP facility (BMP Facility 1), proposed in the northwestern portion of the site, will be developed as a wet pond and will serve the entire development, including the proposed public use site in the southeastern corner. The applicant is proffering to develop this facility when the residential units are constructed. If the public use site is needed before the development of the residential units, the applicant is not proposing to construct interim SWM facilities for the site. Instead, public funds would be required to construct these facilities. Staff maintains that the applicant should provide adequate stormwater facilities for the public use site regardless of development timing.

Applicant Response: The Applicant agrees to construct the temporary stormwater management facility (See Proffer III.C.) in the event the Public Use Site is developed prior to the residential units. The Applicant will take capital facilities credit for the cost associated with providing a temporary storm water management facility for the public use site.

11. **Staff Position:** Additional proffer commitments are needed to ensure the viability of the archaeological site. A previously unrecorded archaeological site (44LD947) has been identified along the eastern portion of the site within the residential component. The Phase I archeological survey identified it as an early nineteenth century domestic site based on the small artifact assemblage. The site is thought to be either a tenant or an African American slave site. Sites relating to enslaved African Americans and tenant farmers are not well documented in the County or the region. This site may yield important information related to these populations. The site is considered to be potentially eligible for listing in the National Register of Historic Places by the consultant who conducted the Phase 1 survey. The applicant is preserving this site in a Tree Conservation Area (TCA) as depicted on the Rezoning Plat (sheet 4). The proffers (Proffer IV) provide a commitment that the applicant shall conduct a Phase II Archaeological Study for the site prior to any land disturbance and/or approval of any site plan on this portion of the site. The owner shall not be required to perform any additional archaeological studies for this site if it remains undisturbed in accordance with Plan policies. Staff has recommended a Phase II investigation to ascertain archeological site boundaries and eligibility for the National Register of Historic Places. A 25-foot buffer surrounding the site should also be specified. If tree removal is required for any reason, trees

should be cut and not dug out. The draft proffers should be amended to reflect these commitments to ensure viability of the site.

Applicant Response: The Applicant continues to propose that the Archaeological Area remain undisturbed. No change to the application is proposed.

12. **Staff Position:** Board policy anticipates residential applications will include provisions for unmet housing needs across a broad segment of the County's income spectrum from 0 – 100% of the Area Median Income (AMI). The application does not provide any commitments except for the required 28 Affordable Dwelling Units (ADUs).

Applicant Response: No change to the application is proposed. All zoning requirements for ADUs will be met.

13. **Staff Position:** Shared-use trails along City Center Boulevard and Nokes Boulevard should be constructed to a width of ten-feet. The rezoning plat depicts five foot wide sidewalks along both road frontages.

Applicant Response: The Applicant continues to propose five-foot sidewalks along both road frontages, consistent with the sidewalks to which they will connect.

14. **Staff Position:** A cash equivalency should be provided for future traffic signals. The applicant has proffered to provide a warrant study (prior to the 300th residential unit for the City Center signal and within 2 years of the 50,000th square foot of commercial development for the Nokes signal) and to install both signals if warranted. If signals are not needed at the time the warrant study is completed, the applicant's proffers specify that there will be no obligation to provide traffic signals in the future. If traffic signals are not warranted at a specific time, developers generally proffer cash equivalencies to cover the cost to install traffic signals in the future when the signal is needed. The applicant has not agreed to provide a cash equivalency for future signals. This would require the use of public funds to install future traffic signals at these intersections.

Applicant Response: The Applicant had proffered in its last submission to provide two traffic signals: one at the intersection of Haleybird Drive / City Center Boulevard, and the other at the Nokes Boulevard entrance into the development. The Applicant has amended the proffers with this submission so that a cash contribution in the amount of \$150,000 will be made for each unwarranted signal. If a cash contribution is made, the amount paid will be credited against the Applicant's capital facilities contribution, given that the demand for the signal will be generated by traffic other than that from Parc Dulles II.

15. **Staff Position:** A commitment to extend Haleybird Drive should be provided. A four-lane section of Haleybird Drive is already completed along the northern property line. The applicant has proffered to construct a half-section (2 lanes) of Haleybird Drive off-site to the east to connect with Ridgetop Circle in Loudoun Tech Center. Loudoun Tech Center has already dedicated sufficient right-of-way to accommodate the four-lane extension. The applicant proposes to provide a two-lane section of Haleybird Drive to Ridgetop Circle prior to approval of the initial site plan for residential

development or prior to occupancy of at least 50,000 square feet of commercial development. In conjunction with the approved proffers for the Dulles Town Center rezoning application (ZMAP 1990-0014), the applicant provided a letter of clarification dated December 16, 1991, that required the construction of a half section (2-lanes) of Haleybird Drive from City Center Boulevard (Dulles Town Center) to Ridgetop Circle (Loudoun Tech Center). The letter of clarification states that the half section should have been constructed concurrently with the development of the Parc Dulles community (immediately north of the subject site - attachment A-4). A 4-lane extension of Haleybird Drive needs to be constructed with this application to Ridgetop Circle in order to complete the surrounding road network.

Applicant Response: The Applicant agrees to construct a 4-lane extension of Haleybird Drive, so that it connects to Ridgetop Circle in Loudoun Tech Center, provided all necessary off-site easements exist and all necessary off-site right-of-way has been dedicated. (See Proffer V.B.) Provided these conditions are met, construction plans for Haleybird Drive will be submitted for approval to the County prior to approval of the initial site plan for residential development or prior to occupancy of the 50,000th square foot of commercial development. A capital facilities credit will be taken for construction of Haleybird Drive Extended.

16. **Staff Position:** A commitment to transit funding should be provided. Staff has recommended a transit contribution of \$575 per dwelling unit (total contribution of \$255,875) in order to facilitate transit services in the vicinity of the subject site. The applicant will provide a contribution of \$575 per unit to facilitate transit services only if the transit center proposed in the Dulles Town Center application is denied. Staff maintains that the Dulles Town Center application is a separate proposal that has no bearing on transit contributions for this case.

Applicant Response: The Applicant agrees to the requested transit contribution on market rate units. Proffer V.D.2 has been added to reflect this commitment.

17. **Staff Position:** The Special Exception requests should be removed from the application (approval of a fire and rescue station site and office uses in excess of 20% of the commercial floor area).

- a. **Staff Comment re: Fire and Rescue:** Staff has recommended the withdrawal of the fire and rescue station request based on site size, development constraints, and access concerns. The County has recently approved a 5-acre fire and rescue site in conjunction with the Kincora rezoning which would negate the need for the site at this location.

Applicant Response: The Applicant agrees to withdraw the Special Exception request for a fire and rescue station.

- b. **Staff Comment re: Office in Excess of 20%:** The applicant is requesting a Special Exception to allow office uses in excess of 20% of the commercial floor area. The Concept Plan and proffers cap commercial development at 100,000 square feet (.18 FAR). Up to 75,000 square feet (75% of the site) can be developed with office uses and up to 60,000 square feet (60 % of the site) can be developed with other permitted PD-CC-CC uses (17,000 square feet will be available for the public

use site). The proffers do not require the development of either office or commercial uses at this location.

The purpose of the PD-CC-CC zoning district is to serve the retail shopping needs of the surrounding community. Office uses should not be the predominate use in this district. Staff does not support the Special Exception request since the proposal does not meet the purpose and intent of a PD-CC-CC district. The application should be revised to rezone the southern portion of the property to a PD-OP (Office) designation in order to develop office uses in compliance with planned land use policies.

Applicant Response: The Applicant continues to seek a zoning designation of PD-CC(CC) for the southern portion of Parc Dulles II, in order to achieve a balance of retail and office uses that the PD-OP zoning designation cannot provide.

18. **Staff Position:** A commitment to provide a one-time contribution of \$.10 / square foot of SPEX use should be provided. The applicant has proffered a fire and rescue contribution of \$120.00 / residential unit and \$.10 / square foot of non-residential development. An additional one-time contribution of \$.10 / square foot of Special Exception use is also anticipated by Board policy.

Applicant Response: The Applicant respectfully seeks clarification. The proffered \$0.10 per square foot contribution would apply to all non-residential development, including any non-residential development established on the Property by Special Exception. Does the comment from staff mean that for a non-residential use established by Special Exception, a total Fire and Rescue contribution of \$0.20 per square foot is expected? If so, how is a non-residential use established by Special Exception different from a non-residential use established by-right, when it comes to fire and rescue services?

19. **Staff Position:** The Revised 1993 Zoning Ordinance specifies that a proposal should be consistent with the Comprehensive Plan. The Revised 1993 Zoning Ordinance, Section 3-701 (Purpose) specifies that R-24 districts shall be mapped in locations designated primarily for infill development or in other locations consistent with the Comprehensive Plan. Section 4-201 (Purpose) of the Revised 1993 Zoning Ordinance, specifies that Commercial Centers (PD-CC) shall be located in areas consistent with the Comprehensive Plan. The proposed rezoning to R-24 and PD-CC-CC is not consistent with the land use policies of the Comprehensive Plan since the application proposes high-density residential and community-serving commercial uses.

Applicant Response: Please see responses to comments 1 and 2, above.

20. **Staff Position:** The application does not meet the purpose and intent of a PD-CC-CC (Commercial Center – Community Center) zoning district. The applicant amended the application to increase the amount of potential office development from 23,400 square feet to 75,000 square feet (maximum of 100,000 square feet of commercial development proposed). This potentially increases the amount of office in the PD-CC-CC district from 23% to 75%. This is not consistent with the purpose of the PD-CC-CC district, which is to serve the retail shopping needs of the surrounding community. Office uses should not be the predominate use in a PD-CC-CC district.

If the applicant intends to develop significant amounts of office space, the appropriate district is PD-OP (Office Park), which would allow a predominant office development and would be in conformance with Keynote Employment policies.

Applicant Response: Please see responses to comments 1 and 2, above.

21. **Staff Position:** Public road access should be provided to accommodate the proposed mix of uses (residential and community-serving commercial). The development would be served by private streets, including the main spine road that connects the commercial and residential components. Staff has consistently recommended that the main spine road should be public. The PD-CC-CC regulations, Section 4-206 (D) of the Revised 1993 Zoning Ordinance state that vehicular access to commercial centers shall be provided on collector roads, which, by definition, are publicly owned and maintained. This section also specifies that primary access to commercial areas shall be prohibited on residential neighborhood streets. The site layout proposes a continuous, 2-lane private street that connects directly from the commercial component to the residential component. The applicant has stated that private streets are needed to accommodate certain design aspects (such as reduced setbacks).

Applicant Response: The Applicant believes that the proposed layout meets the road requirements applicable in the PD-CC(CC) zoning district. The PD-CC(CC) zoned portion of the Property is situated against Nokes Boulevard, which is classified as a collector road. As a result, this commercial center provides direct public access to a collector road, as required under Section 4-206(D)(2) of the Zoning Ordinance. Section 4-206(D)(2) of the Zoning Ordinance prohibits primary access to commercial centers from residential neighborhood streets. While secondary access to the PD-CC(CC) portion of the Property may be available from Haleybird Drive, through the R-24 zoned portion of Parc Dulles II, primary access is off of Nokes Boulevard, as required. In addition, the Applicant has submitted a modification request, to modify Section 2-406(D)(2) so that the PD-CC(CC) zoning district can access a collector road (Nokes) by way of a private street.

22. **Staff does not support the zoning modification requests.** The applicant is requesting 2 modifications: to reduce the yard for buildings, parking, areas for collection of refuse and loading areas from 100 feet to 50 feet between the commercial and residential components and to allow private access ways to serve the development instead of the required public roads.

Applicant Response:

The requested modifications are an integral part of creating a vibrant mixed-use community and provide for a superior design which integrates the projects commercial and residential components, promotes a walkable pedestrian oriented environment, and provides enhanced landscape screening and design elements to buffer the adjacent uses appropriately. Each modification is discussed in more detail below:

(a) **Reduced Yard Modification.** As demonstrated by other mixed-use developments in the County, such as Lansdowne Town Center, a reduced setback between residential and commercial uses can be desirable to create an active pedestrian environment and to promote a cohesive neighborhood. The Zoning Ordinance requirement to setback each building in the PD-CC(CC) zoning district 100 feet from the R-24 district boundary creates an unnecessary void between the commercial and high-density residential uses, without providing significant benefit. Instead, the Applicant commits to provide 75 feet of separation between the commercial and residential uses, comprised of 50 feet on the PD-CC(CC) property, and an additional 25 feet on the R-24 property. In addition, the Applicant has proffered an enhanced landscape buffer in this open space area.

(b) **Access to Commercial Center Modification.** A second modification has been requested to permit access to the site from Nokes Boulevard via a private road. The private road will provide safe, convenient, and coordinated access to the Community Center from a Major Collector, in keeping with the Ordinance requirements. The Applicant has committed to provide signalization at the intersection of the private road and Nokes Boulevard, if warranted, or to fund a future signal at such time that it becomes warranted. Nokes Boulevard, a four lane median divided roadway with necessary turn lanes and a commitment to future intersection signalization, exceeds the requirements of the Ordinance and provides for safe, efficient and suitable access.

23. **Staff Position:** The residential conversion of Keynote Employment area exacerbates school capacity issues. Potomac Falls High School has exceeded capacity. Countryside Elementary and River Bend Middle Schools are close to capacity.

Applicant Response: Loudoun County Public Schools has indicated that students from Parc Dulles would attend the Park View cluster of schools, in the event there are capacity issues.

Please do not hesitate to let me know if you have any questions about the enclosed materials. We look forward to scheduling the next Planning Commission worksession.

Sincerely,

REED SMITH LLP

Sally Hankins
Sally Hankins *ijb*

SH:jb

Enclosures

cc: Arthur N. Fuccillo, Esq.
Benjamin F. Tompkins, Esq.
Zeb Hoffman

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Parc Dulles II
(ZMAP 2002-0017)

PROFFER STATEMENT

March 4, 2004
Revised March 10, 2008
Revised February 20, 2009
Revised July 27, 2009
August 31, 2009
October 15, 2009
August 26, 2010

Parc Dulles II
(ZMAP 2002-0017)
PROFFER STATEMENT

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EXHIBITS

Exhibit A:

Parc Dulles II Rezoning Application Plan Set, prepared by Dewberry and Davis, LLC, dated July, 2002, as revised through August 26, 2010

Parc Dulles II
(ZMAP 2002-0017)

PROFFER STATEMENT

March 4, 2004
Revised March 10, 2008
Revised February 20, 2009
Revised July 27, 2009
Revised August 31, 2009
Revised October 15, 2009
Revised August 26, 2010

PREAMBLE

Pursuant to the Code of Virginia, 1950, as amended, and Section 6-1209 of the Revised 1993 Loudoun County Zoning Ordinance ("Zoning Ordinance"), as amended, DTC Partners, LLC (the "Owner"), owner of Loudoun County Tax Map 80, Parcel 102 (MCPI 029-37-6224) (portion) consisting of approximately 34.1 acres of real property (the "Property") which is the subject of rezoning application ZMAP 2002-0017, hereby voluntarily proffers that development of the Property shall be in substantial conformity with the proffers as set forth below (the "Proffers") and with Sheets 1 and 4 of Exhibit A, Parc Dulles II Rezoning Application Plan set, prepared by Dewberry and Davis, LLC, dated July, 2002, revised through August 26, 2010. All Proffers made herein are contingent upon the approval by the Board of Supervisors of Loudoun County (the "Board") of the change in the zoning district requested in rezoning application ZMAP 2002-0017 from the PD-IP zoning district to the R-24 and PD-CC(CC) zoning districts.

I. REZONING PLAT

A. Substantial Conformity. The Owner proffers that the Property shall be developed in substantial conformity with Sheets 1 and 4 of the Parc Dulles II Rezoning Application Plan Set attached hereto as Exhibit A dated July, 2002, with revisions through August 26, 2010, prepared by Dewberry and Davis, LLC (collectively the "Rezoning Plat"). The Property shall be developed as follows:

PARC DULLES II

(ZMAP 2002-0017)

Proffer Statement

March 4, 2004

Revised March 10, 2008

Revised February 20, 2009

Revised July 27, 2009

Revised August 31, 2009

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1. Residential Land Use.

- a. **Density & ADUs.** To include up to 445 multi-family units, of which 6.25% of the actual units built shall be Affordable Dwelling Units (ADUs), as, and to the extent, required by Section 7-100 of the Zoning Ordinance in effect as of the date hereof.
- b. **Design.** Residential buildings, including associated community center facilities, shall reflect both the architectural design and building materials generally found in quality luxury residential developments in Northern Virginia, including the residential project located immediately north of the Property ("Parc Dulles"). The building materials used in Parc Dulles II residential (R-24) zoning district would be similar in quality to the following materials: cultured or natural stone; masonry; precast concrete; wood, high quality exterior siding; Synboard™ trim, Fypon™ mouldings; and asphalt shingles.

Pedestrian-scale lighting will be provided within the active recreation areas, including the Village Green, Pool Center, and Community Green. Additionally, a minimum of 2 benches will be provided within each of the Village Green and Community Green, and a minimum of 1 picnic table will be provided within the R-24 zoned portion of the Property. A Type II Rear buffer yard will be provided within the R-24 zoning district, as shown on Sheet 4 of the Rezoning Plat, in areas that are both adjacent to the PD-CC(CC) zoning district and subject to the "modified 50-foot setback" as labeled on the Rezoning Plat. Landscaping and screening shall be used to screen areas for collection of refuse from residential use. To the extent feasible, rooftop mechanical equipment will be screened from view.

2. Commercial Land Use.

- a. **Density.** To include up to 117,000 square feet of uses permitted in the PD-CC(CC) zoning district allocated as follows:

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- i. 17,000 sf shall be available solely for the Public Use Site as shown on Sheet 4 of the Rezoning Plat ("Public Use Site").
 - ii. Development outside of the Public Use Site shall not exceed 100,000 square feet. No more than 60,000 square feet shall be available for non-office PD-CC(CC) uses, whether permitted as a matter of right, or by special exception. Up to 75,000 square feet shall be available for office uses. (23,400 square feet of office use is permitted in the PD-CC(CC) zoning district, and 51,600 square feet of office use is permitted pursuant to Special Exception 2008-0027).
 - iii. A tabulation, by square footage, of all uses within the PD-CC(CC) land bay shall be provided on all site plans for the area designated as "Limits of Office Special Exception," on Sheet 4 of the Rezoning Plat. Said tabulations shall categorize uses as "Office-by right," "Office - by Special Exception," "Non-office, by-right," or "Non-office, by Special Exception" and shall provide the cumulative square footage of each along with the maximum permitted for each category.

3. **Phasing.** Prior to the issuance of the 400th zoning permit for residential uses in the R-24 Zoning District, the Owner shall have obtained zoning permits for at least 28,000 square feet of development in the PD-DD(CC) Zoning District, excluding the Public Use Site.

B. **Administration.** The Property will be developed in accordance with the PD-CC(CC) Zoning District pursuant to Section 4-200 of the Zoning Ordinance, and the R-24 Zoning District, pursuant to Section 7-1000 of the Zoning Ordinance.

II. PUBLIC WATER AND SANITARY SEWER

The Property shall be developed using public water and sewer facilities, which shall be provided to the Property at no cost to Loudoun County (the "County") or to Loudoun Water.

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III. STORMWATER MANAGEMENT AND WATER QUALITY

A. Water Quality. The Owner will provide stormwater management and Best Management Practices ("BMPs") in accordance with the Loudoun County Facilities Standards Manual ("FSM") standards applicable at the time of Site Plan submission.

BMP Facility 1, as shown on Sheet 4 of the Rezoning Plat, will be provided as a retention (wet) pond with sediment forebays, and will be located to the extent practical so as to not disturb the adjacent wetlands and drainage channel. This facility shall be constructed at the time of construction of the adjacent residential uses and shall provide BMPs for all development on the Property that (i) is located east of the drainage channel, and (ii) drains to BMP Facility 1, including the Public Use Site. BMP Facility 1 shall include in its vicinity the following amenities: trails and walkways, as shown on Sheet 4 of the Rezoning Plat, 1 gazebo and 3 benches.

BMP Facility 2 will be constructed at the time of construction of the adjacent commercial building located at the corner of Nokes Boulevard and City Center Boulevard, as shown on Sheet 4 of the Rezoning Plat, and shall provide BMPs for all development on the Property that is located west of the drainage channel.

A temporary BMP facility may be constructed on the Property to serve the PD-CC(CC) zoned property if commercial development therein precedes residential development in the R-24 zoning district.

B. Low Impact Development. The Owner shall provide at least one Low Impact Development (LID) measure deemed likely to be effective based on the physical characteristics of the site. LID measures may include but are not limited to rain gardens, bio-swales, and other structural devices. Any LID measure will be subject to review and approval by the County to ensure that such LID measures are consistent with the FSM in effect at the time of site plan review, and shall be included in the site plan for the portion of the Property that includes the LID measure.

C. Interim BMPs for Public Use Site. Should the Public Use Site develop prior to the construction of BMP Facility 1, depicted on Sheet 4 of the Rezoning Plat, the Owner shall construct an interim BMP facility to serve the Public Use Site that is sufficient to meet minimum FSM requirements in effect at the time of site plan review for the Public Use Site. In the event that the temporary BMP facility referenced in Proffer III.A., above, has been constructed when the need for the interim BMP facility referenced herein arises, then the existing temporary BMP

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facility may be modified to serve the Public Use Site. The Owner shall cooperate with the appropriate Loudoun County agency in siting the interim BMP facility proffered in this paragraph. The Owner may remove the interim BMP facility upon construction of BMP Facility 1. The Owner shall take credit against the expected capital facility contribution for the cost to construct an interim stormwater management facility to serve the Public Use Site.

IV. ARCHAEOLOGICAL

If the Owner is to perform any land disturbing activities within the area shown on the Rezoning Plat as "Archaeology Area," which includes the site identified as 44LD947 in the Phase I Archeological Study prepared by Thunderbird Archeological Associates, Inc, the Owner shall provide the County with the results of a Phase II Archeological Study of said site. If a Phase III Archeological Study is recommended for site 44LD947 as a direct result of the Phase II Study, the Phase III will be conducted prior to any land disturbance and/or approval of any site plan (whichever occurs first) for the Property. All future land development submissions that include the archaeological site shall depict the location of the site.

The Owner shall not be required to perform any additional archeological studies for site 44LD947 if the area identified as the Archaeology Site on the Rezoning Plat remains undisturbed. The Archaeology Site shall be demarcated with metal demountable (chain link) fencing during construction to protect the integrity of the site. Further, the restrictions set forth in Proffer VIII.C, "Tree Conservation Area," are applicable to the Archaeology Area.

V. TRANSPORTATION

A. Road Network. Unless otherwise specified in these Proffers, all roads constructed pursuant to these Proffers shall be constructed in accordance with the County of Loudoun's Land Subdivision and Development Ordinance (LSDO) and the FSM to provide access to the development parcels depicted on the Rezoning Plat. All roads proffered herein for access to and within the Property will be designed and constructed in accordance with Virginia Department of Transportation ("VDOT") and County standards for private roads, unless modified otherwise. Public ingress-egress easements will be placed on all private streets in the development for County and Emergency vehicles.

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B. Haleybird Drive Extended. Prior to the issuance of approval of the first site plan for any residential development in the R-24 zoning district or prior to the issuance of the first occupancy permit for more than 50,000 square feet of non-residential development in the PD-CC(CC) zoning district (exclusive of the Public Use Site), whichever is first in time, and provided that all necessary off-site right-of-way and easements are in place, the Owner shall submit a construction plan and profile (CPAP) to construct a 4-lane section of Haleybird Drive from its current terminus in Dulles Town Center to its intersection with Ridgetop Circle, including required turn lanes and a five (5) foot wide sidewalk to provide a pedestrian connection from the Property to Ridgetop Circle ("Haleybird Drive Extended"). The Owner shall commence construction within 120 days of receipt of all required approvals from the County and the existence of all necessary off-site right-of-way and easements. The Owner shall not be responsible for obtaining any off-site right-of-way or easements and shall not be required to incur any cost or expense with respect to the same. Upon completion of construction, the Owner shall cooperate with the County to seek to have Haleybird Drive Extended accepted into the state system of public roads. The Owner shall take a credit against the expected Parc Dulles II capital facility contribution equal to the cost to construct Haleybird Drive Extended.

C. Signalization. The Owner shall: (i) submit to VDOT a traffic signal warrant analysis for the intersection of Haleybird Drive and City Center Boulevard prior to the issuance of the 300th residential zoning permit, and (ii) submit to VDOT a traffic signal warrant analysis for the intersection of the site entrance and Nokes Boulevard within 24 months of the issuance of an occupancy permit for the 50,000th square foot of non-residential development.

The Owner shall submit a signalization construction plan to VDOT within 60 days from VDOT's determination, based on an aforementioned warrant analysis, that a signal is warranted. Once VDOT has approved a signalization construction plan, the Owner shall diligently pursue construction of said approved signal. Any signal so constructed shall include a pedestrian activated device, consistent with VDOT approvals.

For each warrant analysis that concludes a traffic signal at the studied intersection is unwarranted, the Owner shall make a cash contribution in the amount of \$150,000 to the County for the cost to design and install a future traffic signal at the studied intersection. For the intersection of Haleybird Drive and City Center Boulevard, said contribution shall be paid prior to issuance of the 400th residential zoning permit on the Property. For the intersection of the site entrance and Nokes Boulevard, said contribution shall be paid prior to issuance of an occupancy permit for the 70,000th square foot of non-residential development. The Owner will take credit against the expected Parc Dulles II capital facility contribution equal to the amount of any cash contribution made for traffic signals determined by VDOT to be unwarranted.

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D. Transit Services.

1. **Bus Shelters.** The Owner shall construct two bus shelters upon request from the Office of Transportation Services ("OTS"), in locations within the area bounded by Route 28, Route 7, City Center Boulevard and Nokes Boulevard, inclusive of the roadways defining this area, which locations are to be designated by OTS or other appropriate Loudoun County agency. OTS may request the bus shelters at any time from and after the issuance of the zoning permit for the 400th residential unit. Any bus shelter constructed shall be consistent with the County's minimum bus shelter design standards as of the date of approval of this application, ZMAP 2002-0017. The Owner will take credit against the expected Parc Dulles II capital facility contribution equal to the cost to construct any bus shelter constructed, or undergoing construction, as a result of this proffer.

2. **Transit Contribution.** The Owner shall pay to the County Five Hundred and Seventy Five and 00/100 Dollars (\$575.00) for each market rate residential unit constructed on the Property (the "Transit Contribution"). The Transit Contribution shall be paid prior to issuance of the zoning permit for each such residential unit. The Owner will take credit against the expected Parc Dulles II capital facility contribution equal to the amount of this cash contribution.

E. Construction Traffic. Construction traffic will be directed by the Owner to access the Property via Nokes Boulevard or Haleybird Drive.

F. Internal Access to Public Use Site.

1. The Owner shall provide access to the Public Use Site from the private road extending generally north and south through the Property from Nokes Boulevard to Haleybird Drive ("Major Travelway"), via the roadway depicted on Sheet 4 of the Rezoning Plat as the "Internal Access to Public Use Site." Said Internal Access to Public Use Site shall be included in site plans that include, and shall be constructed concurrently with, the intersection of the Major Travelway and the Internal Access to Public Use Site.

2. If a use is constructed on the Public Use Site prior to the Owner's construction of the Internal Access to Public Use Site, the Owner shall, at the request of the County, construct a temporary internal access from the Nokes Boulevard entrance to the Property to the Public Use Site. The temporary internal access shall be closed when the Internal Access to Public Use Site is open for use and the Public Use Site can be accessed therefrom.

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3. Within 60 days from the date the County has both submitted a site plan for a use on the Public Use Site and sent a written request to the Owner so requesting, the Owner shall prepare a Road Maintenance Agreement whereby the Owner is responsible for ordinary maintenance of the temporary internal access to the Public Use Site, if constructed, and the permanent Internal Access to Public Use Site. The Agreement shall stipulate that the County shall have no responsibility for the plowing, maintenance, replacement or construction of the Major Travelway or Internal Access to Public Use Site.

VI. CAPITAL FACILITIES and OPEN SPACE EASEMENT CONTRIBUTIONS

A. **Capital Facilities Contributions.** The Owner shall pay to the County a Capital Facilities Contribution in the amount of Ten Thousand Nine Hundred Thirty Seven and 00/100 Dollars (\$10,937.00) for each market rate residential unit constructed on the Property (the "Capital Facilities Contribution"). The Capital Facilities Contribution shall be paid prior to issuance of the zoning permit for each such residential unit.

B. Public Use Site.

1. **Size of Site and Timing of Dedication.** The Owner shall make available for dedication to the County approximately 1.6 acres of land for the Public Use Site, as shown on Sheet 4 of the Rezoning Plat. The Owner will keep the Public Use Site available for dedication to the County for a period of 10 years from the date these Proffers are approved, after which time the Applicant will have the right to (i) use the land for permitted PD-CC(CC) uses not to exceed 17,000 square feet, or (ii) seek rezoning or special exception approval for other land uses. During the 10-year time period, the Owner shall not grant easements that would materially adversely impact the development of the Public Use Site, nor make use of the Public Use Site, such as staging of construction or soil stockpiling. Within the 10-year time period, the Owner shall submit an application to create a Public Use Site parcel within 60 days of receiving a request for dedication of the Public Use Site from the County, so long as the request is received no sooner than 60 days after the final unappealable approval of ZMAP 2002-0017. The Owner shall dedicate the Public Use Site within 60 days of County approval of a record plat for the Public Use Site parcel.

2. **Utilities.** The Owner shall be responsible for extending water and sewer services from the current terminus of such services to the boundary of the Public Use Site.

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3. **Acceptable Uses.** If developed by the County, the Public Use Site shall be limited to the following uses: a commuter parking lot, a police station, a library, a teen center, a satellite county office, a community center, a post office, a department of motor vehicles office, or a park.

4. **Capital Facilities Credit.** Consistent with County Comprehensive Plan Policy, the Owner shall receive a credit against its Capital Facilities Contribution equal to the appraised value of the Public Use Site based on an appraisal performed by an appraiser on the County's approved list.

C. **Open Space Easement Program.** The Owner shall pay to the County for use in its Open Space Easement Program a contribution in the amount of One Hundred Thirty Four and 81/100 Dollars (\$134.81) for each market rate residential unit constructed on the Property (the "Open Space Easement Contribution"). The Open Space Easement Contribution shall be paid prior to issuance of the zoning permit for each market rate residential unit. The Open Space Easement Contribution shall be used by the County to purchase open space or to provide active recreation facilities in the Sterling Planning Subarea. The Owner will take credit against the expected Parc Dulles II capital facility contribution equal to the amount of this cash contribution.

D. **Escalation Clause.** Any cash contribution proffered herein will be adjusted annually by the lesser of: (i) 2.5%, or (ii) the actual change in price as measured by the U.S. City Average Consumer Price Index for All Urban Consumers ("CPI"). The reference point from which changes in the CPI will be measured will be the first January after the date on which the County approves ZMAP 2002-0017. Each cash contribution owed under these Proffers will be adjusted annually each January thereafter.

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VII. ROUTE 28 TRANSPORTATION IMPROVEMENT DISTRICT PAYMENT

As required by Section 15.2-4608 of the Virginia Code, as amended, on or before thirty (30) days following the final unappealable approval by the Board of ZMAP 2002-0017, the Owner shall tender to the County a lump sum payment in the amount of \$_____ which sum shall be the present value of the future special improvement taxes estimated by the County to be lost as a result of rezoning the Property to a residential use. Upon such payment, the Property shall not be obligated to pay taxes to the Route 28 Transportation Improvement District.

VIII. PEDESTRIAN NETWORK, RECREATION AND THE ENVIRONMENT

A. **Pedestrian Network.** The Owner shall construct a pedestrian circulation system consisting of crosswalks, sidewalks and trails on the Property in substantial conformance with the circulation system illustrated on Sheet 4 of the Rezoning Plat, including the off-site sidewalk which extends from the intersection of Haleybird Drive and City Center Boulevard to Dulles Town Circle, and the crosswalk at the site entrance from Haleybird Drive. Sidewalks need not be constructed in locations where trails are constructed to provide the pedestrian circulation linkage depicted on Sheet 4 of the Rezoning Plat, but sidewalks shall be constructed on both sides of each private road within the Property. Sidewalks and trails shall be constructed at a width and of materials as required by the FSM. Sidewalks and trails shall be constructed in phases concurrently with the development of land in areas adjacent to such sidewalks and trails. Sidewalks and trails outside the public right-of-way shall be subject to an easement providing access to the general public in addition to residents of the Property. The Owner shall provide a minimum of 4 bike racks on the Property in locations selected by the Owner.

B. **Recreation.** The Owner shall construct active recreation uses in the approximate locations depicted on Sheet 4 of the Rezoning Plat. The active recreation uses shall, at a minimum, include:

- 5,000 square foot tot lot playground
- 8,000 square foot bathhouse/clubhouse/community center
- 2,500 square foot swimming facility, to include a swimming pool with a minimum size of 1,400 square feet
- Community and Village Greens.

The tot lot/playground, clubhouse facility, and pool facilities will be constructed prior to the issuance of the 250th zoning permit. The network of Community and Village Greens will be

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constructed in a manner concurrently with the development of land areas adjacent to such community and/or village greens.

C. Tree Conservation. Within the areas identified on the Rezoning Plat as "Tree Conservation Areas," the Owner shall implement a plan designed to preserve healthy trees from construction impacts provided, however, that trees may be removed to the extent necessary for the construction of trails and Stormwater Management Facilities that are required pursuant to the proffers and/or shown on the approved construction plans and profiles as lying within such Tree Conservation Areas and for the construction of utilities necessary for development of the Property. Within the area depicted as Archaeology Area, however, neither utilities nor stormwater management facilities are permitted. Within the area depicted as Sections A and B on the Stream Valley Plan described on Sheet 7, the areas more specifically identified as "Naturalized Planting Area" may be maintained as needed by the Owner and are excluded from the requirement to maintain tree canopy.

A minimum of eighty (80) percent of the canopy within the cumulative Tree Conservation Area depicted on the Rezoning Plat will not be removed, exclusive of stands of Virginia Pine over 25 years in age. In the event that the eighty (80) percent canopy threshold cannot be achieved as a result of the construction of trails or Stormwater Management Facilities required pursuant to these proffers or as a result of the construction of utilities necessary for development of the Property within the designated Tree Conservation Areas, such lost canopy will be recaptured elsewhere onsite in locations to be designated at the discretion of the Owner in consultation with the County. Boundaries of all Tree Conservation Areas shall be delineated on the record plat recorded for each section of the development, as well as on all site plans for the Property. The "eighty percent" referenced above shall be calculated based on the approximate land area identified on the Rezoning Plat as Tree Conservation Area, and not by counting individual trees.

If, during construction on the Property, it is determined by the Owner's certified arborist and the County that any healthy tree located within the boundaries of any of the Tree Conservation Areas described in this proffer has been damaged as a consequence of construction and will not survive, then, prior to bond release on any section containing or immediately adjacent to a tree conservation area, the Owner shall remove each such tree and replace each such tree with two (2) 2½ - 3 inch caliper native, non-invasive deciduous trees. The placement of the replacement trees shall be proximate to the area of each such damaged tree so removed, or in another area on the Property as requested by the County.

The Property Owners Association ("POA") documents shall include a provision that prohibits removal of trees in Tree Conservation Areas, as shown on the record plat, after construction has

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been completed by the Owner, without specific permission of the County Forester, except as necessary to accommodate forest management techniques, performed by or recommended by a professional forester or certified arborist, that are necessary to protect or enhance the viability of the canopy. Such management techniques may include, without limitation, pruning and the removal of vines, invasive species, trees uprooted or damaged by extreme weather conditions, and trees or limbs that are diseased, insect-infested, dead, or are considered a hazard to life or property. The POA documents shall clearly state that such provisions prohibiting tree removal shall not be amended by the Owner or the POA without written approval from the County. The record plat for each portion of the Property containing a Tree Conservation Area shall contain a note stating that the removal of trees within a Tree Conservation Area is prohibited except in accordance with the Declaration of Covenants.

D. Wetlands Mitigation. For any wetland and stream impacts on the Property, in conjunction with the permitting process by the United States Army Corps of Engineers ("USACE") and Virginia Department of Environmental Quality ("DEQ"), and if required by the USACE and/or DEQ, the Owner shall provide wetland mitigation in the following priority order: 1) onsite, 2) within the Broad Run Watershed Area within the same Loudoun County geographic Planning Policy Area, 3) within the Broad Run Watershed Area within another Loudoun County geographic Planning Policy Area, or 4) elsewhere within Loudoun County, subject to approval by USACE and DEQ. If no such areas are available within the County at a cost equal to or less than 110% of the cost of mitigation options elsewhere in the Potomac River Watershed, as verified by County Staff, the Owner shall be permitted to provide wetland mitigation outside of Loudoun County but within the Potomac River Watershed. This proffer does not preclude the Applicant from being able to use other means of mitigation acceptable to the Director of Building and Development.

E. Noise Mitigation. For all residential uses in the R-24 zoning district, the Owner shall ensure that interior noise levels will not exceed an average sound level of 45 dBA. The appropriate noise study conducted and certified by a licensed acoustical engineer shall be submitted concurrent with residential site plan to ensure that this interior noise standard is achieved.

F. Stream Valley Plan. The Owner shall submit to the County, concurrently with the first site plan application for any development in the R-24 zoning district, a re-vegetation plan as described on Sheet 7 to guide installation of plant material specified for Section A and Section B (located off-site) of the Stream Valley Plan provided on Sheet 7 for determination that such plan is consistent with Sheet 7. Installation, consistent with said re-vegetation plan, once it has been determined to be consistent with Sheet 7, shall be complete prior to issuance of the first

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occupancy permit for the R-24 zoning district. The restrictions described in Proffer VIII.C, "Tree Conservation Area," are applicable to Sections A and B of the Stream Valley Plan.

G. Lighting. All site lighting will be downward directed, fully shielded and in conformance with the Zoning Ordinance.

H. Sustainable Development.

1. Construction Waste Management. Prior to the approval of each building permit, the Owner shall provide the County with a Construction Waste Management Plan ('Plan') for the building associated with such permit for diverting from landfill disposal at least 50 percent of the construction debris generated by building construction on the Property. The Plan shall outline recycling and/or reuse of waste generated during construction. The Plan shall outline specific waste streams and identify the means by which waste will be managed (reused, reprocessed on-site, removed by licensed haulers for reuse/recycling, etc...). The Plan must include letters from contracted haulers, reprocessors, and recyclers indicating that they are able to manage waste from construction on the Property, in accord with the Plan. The Owner shall use commercially reasonable efforts to implement the Plan throughout construction of the associated building.

2. Water Conservation. For all residential development, the Owner shall provide that the following types of fixtures and/or building components used in the project (in dwelling units and common areas) shall have earned the U.S. EPA's Water Sense label, or a similar standard: toilets, and sink fixtures. The Owner shall submit a statement to the County listing all Water Sense-qualified components prior to issuance of each residential certificate of occupancy.

3. Energy Efficiency. For all residential development, all of the following appliances, fixtures, and/or building components used in the project shall have earned the U.S. EPA's Energy Star label, or similar standard: HVAC equipment, clothes washers, clothes dryers, dishwashers, and refrigerators. The Owner shall submit a statement listing all Energy Star-qualified components to be installed in each unit of the project prior to the issuance of the first residential certificate of occupancy.

For the residential lighting in the dwelling units, the Owner shall provide energy efficient fixtures that provide energy efficient lighting. For the commercial lighting in common areas which include lobbies, corridors, stairwells, common rooms, and fitness rooms, the Applicant shall provide energy efficient fixtures that provide energy efficient lighting.

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IX. EMERGENCY SERVICES

A. **Residential.** At the time of the issuance of each zoning permit for a market rate residential unit, the Owner shall make a one time contribution of One Hundred Twenty Dollars (\$120.00), which shall be payable to the County for distribution by the County to the primary volunteer fire and rescue companies providing service to the Property. Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing fire and rescue services to the Property. At such time as the primary fire and rescue services to the Property are no longer provided by a volunteer fire and rescue company, the obligation to make these contributions at the time of issuance of zoning permits shall cease. In the event one service ceases to be provided by a volunteer company, the contribution will be halved and continue to the other volunteer company. The intent of these provisions is to support a volunteer fire and rescue system so long as it is a primary provider of fire and rescue services to the Property.

B. **Non-Residential.** At the time of the issuance of each zoning permit for a non-residential use, the Owner shall make a one-time contribution of \$0.10 per gross square foot of non-residential floor area, to the County, for distribution by the County to the primary volunteer fire and rescue companies providing service to the Property. For the purpose of this Section, non-residential floor area includes commercial and office area, but excludes HOA facilities and County owned facilities such as schools and or fire and rescue stations. Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing service to the Property. Notwithstanding the foregoing, at such time as the primary fire and rescue services to the Property are no longer provided by incorporated volunteer companies, the obligation to make the contributions listed within this paragraph shall cease. The intent of these provisions is to support a volunteer fire and rescue system so long as a volunteer system is the primary provider of fire and rescue services to the Property. If only one of these services ceases to be provided by a volunteer company, then the contribution shall be halved and shall continue to be provided to the remaining volunteer company.

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X. OWNERS ASSOCIATION

Prior to approval of the first record subdivision plat or site plan, whichever is first in time, the Property will be subjected to the Owners Association for Dulles Town Center as set forth in the Declaration for Dulles Town Center recorded as Instrument Number 20081224-0074249, among the land records of Loudoun County, Virginia.

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XI. BINDING EFFECTS

The Owner warrants that it owns all interests in the Property; that it has full authority to bind the Property to these conditions; that no signature from any third party is necessary for these Proffers to be binding and enforceable in accordance with their terms; that the undersigned is fully authorized to sign these Proffers on behalf of the Owner; and that these Proffers are entered into voluntarily.

DTC Partners, LLC, a Virginia limited liability company

By: Lerner Enterprises LLC, its Manager

By: _____
Its: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

Before the undersigned, a Notary Public in and for the aforementioned jurisdiction, personally appeared _____, as _____ of Lerner Enterprises, LLC, as Manager of DTC Partners, LLC, who acknowledged that he executed the foregoing Proffers with the full power and authority to do so.

IN WITNESS WHEREOF, I have affixed my hand and seal this _____ day of _____, 2010.

Notary Public

My Commission Expires: _____

FINDINGS for DENIAL (September 15, 2010)

Parc Dulles II

ZMAP 2002-0017, SPEX 2008-0027

1. The proposal does not conform to the land use policies of the Revised General Plan, which call for Keynote Employment development in this area. Residential uses are not permitted in areas designated as Keynote Employment.
2. The proposal does not conform to the Board resolution dated April 17, 1996, prohibiting residential conversions of properties in Keynote Employment areas.
3. In accordance with Revised General Plan policies, residential conversions are not permitted in the Route 28 Tax District except in specific locations.
4. The proposal reduces the amount of land available for employment and/or industrial development.
5. The application does not mitigate economic development concerns related to fiscal impacts and phasing / linkage between commercial and residential components.
6. The application does not mitigate transportation impacts regarding cash equivalencies for future traffic signals, and contributions for transit services.
7. The application does not mitigate capital facilities impacts since the application does not provide a contribution amount consistent with Board policies.

From: phillips, george
Sent: Wednesday, September 15, 2010 10:54 AM
To: Rowen, Ginny A..
Cc: Mosurak, Lou; Acker, Charles; Beacher, Andrew
Subject: RE: Parc Dulles Town

Ginny- 9/15/10

Lou and I had a chance to meet and discuss the information you sent. I am responding to the three outstanding issues raised in your November 19, 2009 Planning Commission Public Hearing staff report. Listed below is the outstanding issue, the applicant's response and our recommendation.

-Extension of Haleybird Drive. The applicant should construct a 4-lane extension of Haleybird Drive from the subject site east to Ridgetop Circle (Loudoun Tech Center). The applicant indicates that they are willing to construct it with two caveats. First, all necessary off-site easements and right-of-way must be dedicated. Second, the applicant wants to receive a capital facilities credit for the construction of Haleybird Drive Extended.

OTS notes that the applicant needs to include language in which they will make a good faith effort to obtain any needed off-site easements and/or Right-of-way. We want the road to be constructed by the applicant and not delayed or prevented. Second, the applicant is seeking a capital facilities credit for the construction. Because the applicant's site traffic is not expected to utilize the full capacity of the four lane facility, OTS would agree to a credit of up to 50% of the estimated cost of construction. Also, a construction cost estimate needs to be provided and reviewed by County staff to quantify a calculation.

-Cash equivalency for future signals. The applicant has proffered to provide traffic signals at the intersection of Haleybird Drive/City Center Boulevard and the Nokes Boulevard entrance. If warrants are not met, the applicant should provide a cash equivalency to pay for the installation of traffic signals in the future.

The applicant has agreed to provide \$150,000 per traffic signal. OTS staff notes that more is needed to insure full funding. Based on current cost estimates, \$300,000 is recommended for the Haleybird Drive/City Center Boulevard intersection and \$275,000 is recommended for the Nokes Boulevard entrance. OTS continues to recommend the full funding (\$300,000 and \$275,000 respectively).

-Transit funding should be provided. The applicant will provide a contribution of \$575 per unit to facilitate transit services only if the transit center proposed in the Dulles Town Center application is denied.

The applicant now agrees to provide the \$575 per unit transit contribution without the caveat of the Dulles Town Center transit center being denied. The applicant is also seeking capital facility credit equal to the amount of the contribution. OTS appreciates and agrees with the applicant's \$575 per unit contribution without connection to the Dulles Town Center transit center. However, OTS staff does not agree with the applicant's proposal for capital facilities credit for this. The applicant has already assumed site traffic trip reductions for site residents in the traffic study and the transit facilities anticipated will directly and primarily benefit the site residents.

Let me know if you have any other questions.

Thanks, George

From: Rowen, Ginny A..
Sent: Wednesday, September 15, 2010 8:13 AM

Attachment 4

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